

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 05-30052-MAP

CARNELL GARVIN,)
Plaintiff,)
v.)
D.A. SULLIVAN & SONS, INC.,)
Defendant/Third-)
Party Plaintiff,)
CONSTRUCTION SAFETY)
SERVICES, INC.,)
Defendant,)
v.)
A-DECK, INC.,)
Third-Party Defendant.)

**ANSWER, AFFIRMATIVE DEFENSES AND
JURY CLAIM OF A-DECK, INC. TO AMENDED THIRD-PARTY COMPLAINT**

FIRST DEFENSE

The third-party defendant, A-Deck, Inc., hereby responds to the enumerated paragraphs of the Amended Third-Party Complaint ("complaint") as follows:

1. The third-party defendant admits the allegations of paragraphs 2 and 3 of the complaint.

2. The third-party defendant lacks sufficient information from which it can admit or deny the allegations contained in paragraphs 1 and 4 of the complaint.

3. The third-party defendant denies the allegations contained in paragraphs 5, 6, 7, 9 and 10 of the complaint and all prayers for relief thereunder.

4. No response is called for with respect to paragraph 8 of the complaint, as it is a paragraph of incorporation. To the extent a response to this paragraph is sought, the allegations contained therein are expressly denied.

SECOND DEFENSE

The complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

This action must be dismissed should the court find the asserted contractual indemnity provisions upon which third-party plaintiff relies are void pursuant to public policy and the plain terms of G.L.c. 149, §29C.

FOURTH DEFENSE

The asserted contractual obligations upon which this claim has been brought are barred by application of equitable doctrines of waiver or estoppel.

FIFTH DEFENSE

The claims made herein are barred in full, or in part, should the court find they have not been timely asserted.

SIXTH DEFENSE

The claims made herein are barred to the extent the court finds the third-party plaintiff is in breach of pertinent or material provisions of any contract between the parties.

SEVENTH DEFENSE

No indemnity provision was incorporated into the subcontract.

EIGHTH DEFENSE

The third-party plaintiff breached the subcontract and such breach relieved any obligation of A-Deck to perform thereunder.

WHEREFORE, the third-party defendant, A-Deck, Inc., requests that this action be dismissed with prejudice and with costs and fees assessed against the third-party plaintiff.

THE THIRD-PARTY DEFENDANT RESPECTFULLY REQUESTS A TRIAL BY JURY.

A-DECK, INC.,
By its attorney,

/s/ David M. O'Connor

David M. O'Connor
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DATED: December 28, 2005

CERTIFICATE OF SERVICE

I, Joseph C. Abate, hereby certify that a true copy of this document was served upon all counsel of record by mail on December 28, 2005.

/s/ Joseph C. Abate

Joseph C. Abate